



FREQUENTLY ASKED QUESTIONS ABOUT A FEDERAL PERMIT FOR EAGLE TAKE - ASSOCIATED WITH BUT NOT THE PURPOSE OF AN ACTIVITY (INCIDENTAL TAKE)

A Federal permit for incidental take of eagles authorizes disturbance or other take of eagles where the take is not the purpose of the activity, is necessary to protect an interest in a particular locality, and cannot practicably be avoided.

You should review Title 50 Parts 10, 13, and 22.26 of the Code of Federal Regulations (CFR). You are responsible for understanding these regulations before you request and accept a permit. These regulations can be found on our website at <https://www.fws.gov/birds/policies-and-regulations.php>. Below are questions and answers regarding some of the fundamentals of an eagle incidental take permit.

1. What species of eagles are protected?

The Bald Eagle (*Haliaeetus leucocephalus*) and the Golden Eagle (*Aquila chrysaetos*) are protected by the Bald and Golden Eagle Protection Act (Eagle Act).

2. What is meant by “take” of eagles?

“Take” is defined by regulation as “pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest or disturb.” “Disturb” is further defined in regulation (50 CFR 22.3) as “to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available: (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.” This application form can be used for activities that might cause incidental disturbance, injury, or killing/death of eagles.

If you need to remove an eagle nest (including a tree or structure with an eagle’s nest), do not use this application. Use the Nest Take application (<https://www.fws.gov/forms/3-200-72.pdf>). If your activity may cause both incidental take and require removal of eagle nest(s), contact your Regional Migratory Bird Permit Office for instructions.

3. Can this permit be used for purposeful take of eagles for any purposes?

No. This permit authorizes take only where the take is incidental to and cannot practicably be avoided in the course of an otherwise lawful activity. For purposeful take of eagles, contact your Regional Migratory Bird Permit Office.

4. Under what circumstances can eagles be taken under this type of permit?

The Eagle Act authorizes the Secretary to permit take of eagles “necessary for the protection of... other interests in any particular locality.” This statutory language accommodates a broad spectrum of public and private interests including but not limited to utility infrastructure development and maintenance, road construction, operation of airports, commercial or residential construction, resource recovery, and recreational use that might “take” eagles as defined under the Eagle Act.

5. I do not know if there is an eagle nest near my project, what should I do?

We cannot review a permit application to disturb or take an eagle’s nest without knowing where the eagle’s nest is. As the applicant, you are responsible for determining if there are eagle nest(s) near your project and, if so, where the eagle nest(s) are located in relation to your activity. The USFWS does not keep records of the locations of eagle nests. The State, Tribe(s), or others may have records of eagle nests in your area. Please use caution when querying any eagle nest databases. Information in these databases is often out of date - eagle nests may no longer exist and/or new eagle nests may not be in the database. If you suspect there may be eagle nest(s) in your area, the best approach may be to survey the area for nests. You can start by familiarizing yourself with what eagle nests look like and examining the area. It may also help to ask neighbors in the area and/or hire a biological consultant to determine this for you.

6. Is a person who follows the National Bald Eagle Management Guidelines exempt from the requirement to obtain this permit?

No. A permit is required to authorize any take of any bald eagle (or golden eagle). The Service cannot “exempt” any activity that meets the definition of a “take.” The Guidelines are basic recommendations the Service has provided to help minimize the potential for disturbing bald eagles. However, those recommendations are fairly

generalized and do not address every type of activity. Variable on-site conditions, the temperament of individual eagles, and other factors, make it impossible to predict outcomes with certainty. Each situation is different and it is up to the applicant to determine the level of risk they are comfortable with. An activity that is generally assessed as likely to disturb eagles will not always disturb them, and the presence of a number of variables may affect the likelihood that take will occur. In addition, because the Management Guidelines were developed primarily to reduce disturbance, they contain few measures for avoiding or reducing injury or mortality.

7. How long is an eagle incidental take permit valid?

There are two types of eagle incidental take permits: short-term permits which can be valid for any duration up to 5 years and long-term permits, which can be valid for any duration between 5 years and 30 years. Additional requirements apply to long-term permits (See 50 CFR 22.26(c)(7)).

8. How much are permit application processing fees for this permit?

For short-term permits (5 years or less), the application processing fee is \$500 for non-commercial entities and \$2,500 for commercial entities. The Service considers all applications commercial unless the applicant is an individual, a not-for-profit entity, or a government entity *and* is applying for activities involving their privately owned property. Documentation of not-for-profit or government status may be required.

For long-term permits (more than 5 years), the application processing fee is \$36,000. Long-term permits are also charged an administration fee of \$8,000 for each five-year period the permit is in effect. There is a \$1,000 fee to transfer a permit to a new project owner.

9. Who can apply for a permit?

The entity who (1) is protecting their interest, (2) is responsible for compliance with the permit, and (3) has authority to implement avoidance, minimization, and mitigation measures should apply for the permit. Applicants are most commonly the landowner or project proponent. Contractors and consultants may assist applicants in completing an application as well as conducting the work as a subpermittee, but may not apply for the eagle incidental take permit.

10. Who are the personnel identified on the application form and what are they authorized to do?

(a) **Principal Officer.** For permits issued to organizations, a Principal Officer is identified on the permit. The Principal Officer is the person in charge of the organization and is responsible for the application and any permitted activities.

(b) **Primary Contact.** The Primary Contact is the person in the organization who is available to answer questions about the application or permitted activities. This person may be the same or different than the Principal Officer. The Primary Contact is not listed on the permit unless the individual is also listed as a subpermittee.

(c) **Subpermittee.** A subpermittee is an individual authorized to conduct some or all of the permitted activities without the permittee present. You must identify any subpermittees in your application. Your subpermittees must have either a copy of your permit that identifies them as a subpermittee, or a copy of your permit and a letter from the Permittee (Principal Officer) listing activities (including location and duration) they are authorized to conduct. The permittee is responsible for ensuring subpermittees are trained and adhere to the conditions of your permit. Subpermittees must be at least 18 years of age. Individuals younger than 18 must have a permittee or subpermittee present when conducting activities.

11. What kind of avoidance, minimization, and mitigation measures will be required?

Permits specify required avoidance, minimization, and mitigation measures. Applicants should suggest practicable avoidance and minimization measures in their application materials; however, additional measures may be recommended or required by the Service upon application review. Compensatory mitigation may be required to ensure the preservation of the affected eagle species. Compensatory mitigation that is scaled to project impacts will be required for any permit authorizing take that would exceed the take thresholds established for each eagle management unit. Compensatory mitigation must ensure the preservation of the affected eagle species by reducing another ongoing form of mortality by an amount equal to or greater than the unavoidable mortality, or increasing the eagle population by an equal or greater amount.

12. Are pre-construction surveys required?

Depending on the on the activity and circumstances posing the risk to eagles, some applicants will need to conduct pre-application eagle surveys to obtain the information needed for application processing. Such surveys and monitoring must be according to Service-approved protocols, if such protocols exist. It is best to contact the Service as soon as possible to ensure the appropriate level and effort. Pre-construction surveys will vary depending on the complexity and duration of the activity that will take eagles, and the scope, scale, nature of the expected take. Long-term permits, incidental injury/kill permits may require more than one year of eagle surveys.

Applications for eagle incidental take permits for wind facilities must include pre-construction eagle survey information collected according to standards defined in the regulations at 50 CFR 22.26(d)(3)(ii).

13. Will I be required to submit a report?

An annual report must be submitted either using the Service Form 3-202-15 or containing all the information required by the form (<https://www.fws.gov/forms/3-202-15.pdf>). For all permits with durations longer than 5 years, monitoring must be conducted by qualified, independent entities that are approved by and report directly to the Service. In the case of permits of 5-year durations or shorter, such third party monitoring may be required on a case-by-case basis.

14. What will the Service do with information gathered from the permittee monitoring?

First, the Service will use monitoring information to determine whether take occurs and whether it is within authorized take levels, and for long-term permits whether and how authorized take levels should be adjusted. Monitoring will also allow the Service to determine whether the permittee's avoidance and minimization measures are effective or whether different or additional measures may be warranted through adaptive management. The Service will also use monitoring information to assess whether future, similar activities are likely to disturb or otherwise take eagles. This information will allow the Service to refine permit conditions for future permits and modify recommendations and guidelines for minimizing take of eagles.

15. How will the Service ensure adequate protection for eagles during the lifespans of longer-term permits?

With longer-term permits, the Service has the ability to build more effective adaptive management measures into the permit conditions. This approach will provide a degree of certainty to project proponents because they will have a greater understanding of what measures may be required to remain compliant with the terms and conditions of their permits. This increased level of certainty allows companies to plan accordingly by allocating resources so they are available if needed to implement additional conservation measures to benefit eagles and maintain their permit authorization.

16. Does this permit authorize possession of eagles for any purpose?

No. This permit does not authorize collection of live or dead eagles. You must promptly notify the Service of any eagle(s) found injured or dead at the activity site, regardless of whether the injury or death resulted from your activity. The Service will determine disposition of such eagles. Unless temporarily withheld for purposes of law enforcement or necropsy, eagle remains are sent to the National Eagle Repository for distribution to members of Native American tribes.

17. Do I need additional authorization to take eagles from my State or tribal government?

You are responsible for ensuring that the permitted activity is in compliance with all applicable federal, tribal, state, and local laws and regulations.

18. Is this permit transferable?

Yes. Eagle Incidental Take permits may be transferred. To transfer a permit, the existing permittee must submit a letter notifying the Service of intent to transfer. The proposed transferee must submit:

- a. Section A-D of the 3-200-71 permit application form, including a transfer fee of \$1000 per 13.11(d)(4);
- b. A statement of the outstanding avoidance, minimization, mitigation, and monitoring requirements and capacity to meet these conditions; and
- c. A statement of the qualifications of the permittee and/or subpermittee(s) to carry out the permit conditions.

19. How do I renew my permit?

If you wish to renew your permit, you must submit a renewal application that includes an update on your project status, to your Regional Migratory Bird Permit Office at least 30 days prior to the expiration of your permit along with the appropriate permit processing fee. If the Service receives your renewal request at least 30 days prior to the expiration of your permit, your permit will remain valid beyond the expiration date for the activity authorized on your permit until a decision on your renewal is made. If we receive your renewal request fewer than 30 days prior to expiration of your permit and we are not able to process your request before the expiration date, your permit will expire and you will no longer be authorized to conduct your activity. If you allow your permit to expire before requesting renewal, you may be required to submit a new application. (See 50 CFR 13.11(c) and 13.22)).